

Response to Amendment

1. Applicant's amendments filed May 21, 2010 have overcome the rejection under 35 U.S.C. §112, second paragraph and the objection to claim 10 from previous office action dated September 3, 2009; and claims are in better form for consideration on appeal, as set forth in 37C.F.R. §§ 41.33 and 1.116(b)(2).

Election/Restrictions

2. Claims 7 to 9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on July 27, 2007.

Double Patenting

3. Claims 10 and 11 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 to 3 of U.S. Patent No. 6,808,678 in view of English abstract of JP360100686 ("JP'686") or English abstract of Japanese patent 73029289 ("JP'289"). Although the conflicting claims are not identical, they are not patentably distinct from each other because of reasons stated in the previous office action dated September 3, 2009.

4. In response, Applicants submit that the rejection will be addressed in the appeal, or a Terminal Disclaimer will be filed upon an indication of patentable subject matter in the claims. A Notice of Appeal was filed on March 2, 2010.

Claim Rejections - 35 USC § 103

5. Claims 10 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over machine English translation of Japanese patent 2002-80934 (hereinafter JP'934) in view of English abstract of JP360100686 ("JP'686") or English abstract of Japanese patent 73029289 ("JP'289") for the reasons set forth in the previous office action dated September 3, 2009.

6. In response, Applicants submit that the rejection under 35 U.S.C. § 103(a) will be addressed in the appeal.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah Yee whose telephone number is 571-272-1253. The examiner can normally be reached on monday-friday 6:00 am-2:30 pm.

Art Unit: 1793

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on 571-272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Deborah Yee/
Primary Examiner
Art Unit 1793

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